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10/762,289

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James D. Raymond

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EXAMINER

PLUMMER, ELIZABETH A

ART UNIT

PAPER NUMBER

3635

MAIL DATE

DELIVERY MODE

05/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/762,289

Applicant(s)

RAYMOND, JAMES D.

Examiner

Elizabeth A. Plummer

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-14 is/are pending in the application.
- 4a) Of the above claim(s) 12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-11 and 13-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's amendments and arguments received 02/20/2007 have entered and considered. Claims 1-8 have been canceled. Claims 9-14 have been added. An examination of pending claims 9-14 is herein presented.

Election/Restrictions

Claim 12 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 02/20/2007.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 9, 11-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hand et al. (US Patent 5,303,523) in view of Muirhead (US Patent 2,165,500).

a. Regarding claim 9, Hand et al. discloses a termite deterrent cap (11A,11B,11C) in combination with a pier structure (200,200B), comprising a cement pier (column 1, lines 38-41) having a top end with exterior walls (Fig. 1,2,3), a cap (11A,11B,11C) having a topside, a periphery and sidewalls (39) having an inside surface (47) and extending downward at an outward angle from the periphery of the cap (Fig. 4), said cap being configured and dimensioned to

cover the top end of said pier such that the inside surface of the sidewalls do not contact the exterior walls of said pier (Fig. 3). Hand et al. does not disclose that the pier includes a rod having a lower section centrally embedded in the pier and an upper threaded section extending beyond the top end of the pier for connection to a support timber structure, the cap having a topside with a center aperture and the rod extending through the center aperture. However, it is notoriously well known in the art of insect barriers that a termite deterrent cap in combination with a pier structure can comprise a pier including a rod having a lower section centrally embedded in the pier and an upper threaded section extending beyond the top end of the pier for connection to a support timber structure, the cap having a topside with a center aperture and the rod extending through the center aperture. For example, Muirhead teaches a termite deterrent cap (8) in combination with a pier structure (6), the pier including a rod (10) having a lower section (11) centrally embedded in the pier (Fig. 1) and an upper threaded section extending beyond the top end of the pier for connection to a support timber structure (7) (Fig. 1), the cap having a topside with a center aperture and the rod extending through the center aperture (Fig. 1) in order to more securely and tightly fasten the cap in order to eliminate gaps between the pier and cap (page 1, lines 31-41). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hand et al. to include a pier with a rod having a lower section centrally embedded in the pier and an upper threaded section extending beyond the top end of the pier for connection

to a support timber structure, the cap having a topside with a center aperture and the rod extending through the center aperture, such as taught by Muirhead, in order to enhance the effectiveness of the termite deterrent cap. Furthermore, while Hand et al. does not disclose that the cap is made of plastic, it would have been a matter of obvious design choice to form the cap out of plastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

b. Regarding claim 11, Hand et al. discloses that the cap and the pier can have a generally circular shape (column 4, lines 22-39).

c. Regarding claim 14, Hand et al. in view of Muirhead discloses the invention as claimed except for the sidewalls having a height of about 3 inches. It would have been a matter of obvious design choice to one of ordinary skill in the art at the same time the invention was made to form the sidewalls with a height of 3 inches, as Hand et al. in view of Muirhead is concerned with creating sidewall obstacles of an appropriate length. Furthermore, applicant has not disclosed the criticality of the sidewalls being 3 inches.

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hand et al. (US Patent 5,303,523) in view of Muirhead (US Patent 2,165,500) as applied to claim 9 above, and further in view of Watts, Jr. (US Patent 4,161,090).

Regarding claim 10, Hand et al. in view of Muirhead discloses the invention as claimed except for the periphery and the sidewalls of the cap coming together to form a

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chamfered outer edge. However, it is well known in the art that the periphery and sidewalls of a cap coming together can form a chamfered outer edge. For example, Watts, Jr. teaches a cap (14) on a pier (12) that has the periphery and the sidewalls of the cap coming together to form a chamfered outer edge (Fig. 1,3,9) in order to eliminate sharp edges. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hand et al. in view of Muirhead to include chamfered outer edges, such as taught by Watts, Jr., in order to make an easier to handle and safer termite deterrent cap.

4. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hand et al. (US Patent 5,303,523) in view of Muirhead (US Patent 2,165,500), as applied to claim 9 above, and further in view of Carlson et al. (US Patent 6,223,463). Regarding claim 13, Hand et al. in view of Muirhead discloses the invention as claimed except for the cap being made of polyethylene. However, it is notoriously well known in the art that termite deterrent barriers can be made of polyethylene. For example, Carlson et al. teaches a termite barrier (20) made of polyethylene (column 8, lines 6-18) for its increased strength and flexibility. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hand et al. in view of Muirhead to make the cap out of polyethylene, such as taught by Carlson et al., in order to increase the durability of the termite deterrent cap. Furthermore, it would have been a matter of obvious design choice to the cap out of polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Response to Arguments

5. Applicant's arguments with respect to claims 9-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Plummer whose telephone number is (571) 272-2246. The examiner can normally be reached on Monday through Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Jeanette Chapman
Primary Examiner